IN THE HIGH COURT OF JUDICATURE AT BOMBAY
NAGPUR BENCH : NAGPUR.

Writ Petition No.1625 of 2007

Office Notes, Office Memoranda of Coram, appearances, Court's orders or directions and Registrar's orders.	Court's or Judge's orders

Mr. Abhay Sambre, Advocate for the petitioner.
Mr. B.G. Kulkarni, Advocate for Respondent No. 1.
Mr. R.S. Parsodkar, Advocate for Respondent No. 2.
Mr. Anil Mardikar, Advocate for Respondent No.3 [not present].

CORAM : A.H. JOSHI AND
R.C.CHAVAN,JJ.

DATE : 24th July, 2007.

1. This petition involves a short question, and can be disposed of without going into the details.

2. Heard.

3. The petitioner has challenged the impugned order [Annex.12] on following grounds :-

[a] that the University has no

jurisdiction to grant permission for termination;

[b] the respondent no.3, whose termination was effected, had challenged it before the College Tribunal and lost the case and the issue cannot be re-opened, and

[c] in view of termination of respondent no.3 being confirmed, now the petitioner has gained permanency and his services cannot be dispensed with by taking shelter of permission from the University.

4. Learned Advocate Mr. Kulkarni appearing for University urged that the approval to petitioner's appointment itself was conditional to a decision of the case of the respondent no.3, and that University has not taken any initiative in the matter. The University has simply approved the proposal of the Management and the University has not done any special act.

5. Learned Advocate Mr. Parsodkar, who appears for the respondent no.2-Management,

urged that no indulgence shall be granted to the petitioner, since his case is based on a fraud.

These acts of fraud and illegality etc., according to Mr. Parsodkar, are:-

[a] At the time of appointment, the petitioner submitted the mark-sheet of M.Phil., which was, in fact, showing that he had failed in M.Phil. Examination.

[b] On the representation that he has passed M.Phil., the University had granted permanency. Discovering that the truth is otherwise, the University had reduced its approval to ad hoc basis from a permanent approval.

[c] So far the petitioner has not acquired M.Phil., qualification.

[d] He, therefore, cannot get permanency and, therefore, the Management was right in seeking permission for termination of his services.

[e] The petitioner has fabricated order of confirmation, and upon discovering this, an F.I.R., has been lodged and the

petitioner was even arrested.

[f] Petitioner, whose claim is based on a fraud, has no right of audience before this Court and hence the petition be dismissed.

6. This Court finds that so far the action of termination is not taken. Moreover, the question as to whether the petitioner has played a fraud is now a subject-matter of investigation. This Court, therefore, need not be influenced by these matters.

7. This Court finds that in so far as the University's action is concerned, it had no jurisdiction to issue such approval. It was a matter of exclusive powers of the Management to deal with the services of petitioner as would be supported by facts of the case.

8. In view of the fact that prima facie the respondent no.3 has lost his claim for reinstatement even before the College Tribunal, we find that the Management may, if supported by facts, take action against the petitioner, however, the impugned letter is liable to be set aside.

9. We, therefore, pass the following order:-

[a] The impugned order [Annexure-12] dated 30th March, 2007 issued by the respondent no.1-University is hereby set aside.

[b] The respondent no.2-Management shall be free to deal with the services of the petitioner according to conditions of service, Rules, Regulations and Law, however, questions agitated by the parties are kept open.

Judge Judge

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